



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## ☞ Appendix A ... segment I

### LRB BILL HISTORY RESEARCH APPENDIX

☞ The drafting file for 2013 LRB-3247 (For: Rep. Knudson)

has been copied/added to the drafting file for

**2013 LRB-3915** (For: Rep. Knudson)

☞ Are These "Companion Bills" ?? ... No



**RESEARCH APPENDIX -**  
**PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 02/04/2014 (Per: MED)

☞ The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

**2013 DRAFTING REQUEST**

**Bill**

Received: **9/25/2013** Received By: **mduchek**  
Wanted: **As time permits** Same as LRB:  
For: **Dean Knudson (608) 266-1526** By/Representing: **Matt Rossetto**  
May Contact: Drafter: **mduchek**  
Subject: **Occupational Reg. - prof lic** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **Rep.Knudson@legis.wisconsin.gov**  
Carbon copy (CC) to: **michael.gallagher@legis.wisconsin.gov**

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Changes regarding licenses issued by the Real Estate Boards to individuals with criminal records

---

**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 11/6/2013			_____			
/P1	mduchek 11/20/2013	jdyer 11/26/2013	jfrantze 11/7/2013	_____	lparisi 11/7/2013		
/P2	mduchek 12/3/2013	jdyer 12/3/2013	jfrantze 11/26/2013	_____	lparisi 11/26/2013		State
/1	mduchek	jdyer	rschluet	_____	sbasford		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	12/6/2013	12/9/2013	12/3/2013	_____	12/3/2013		
/2	mduchek 12/20/2013	wjackson 12/20/2013	rschluet 12/9/2013	_____ _____	mbarman 12/9/2013		State
/3			jmurphy 12/20/2013	_____ _____	srose 12/20/2013		State

FE Sent For:

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/P2	mduchek 12/3/2013	jdyer 12/3/2013	jfrantze 11/26/2013	_____	lparisi 11/26/2013		State
/1	mduchek	jdyer	rschlue	_____	sbasford		State

**LRB-3247**

12/9/2013 12:54:21 PM

Page 2

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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				Jan 12/20/13			

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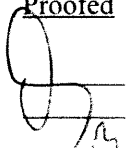
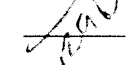

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**Instructions:**

See attached

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/P2	mduchek 12/3/2013	jdye 12/3/2013	jfrantze 11/26/2013		lparisi 11/26/2013		State
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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u> 12/3/2013	<u>Proofed</u> _____	<u>Submitted</u> 12/3/2013	<u>Jacketed</u>	<u>Required</u>
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## Instructions:

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/?	mduchek 11/6/2013	12 3 jld	jd	5m			
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/?	mduchek	P1 11/7 jld	ab	Re			

FE Sent For:

<END>

**Duchek, Michael**

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**From:** Rossetto, Matt  
**Sent:** Tuesday, September 24, 2013 5:05 PM  
**To:** Duchek, Michael  
**Subject:** Drafting instructions RE: real estate licenses for felons  
**Attachments:** WRAFelonyLicensees.pdf

Hi Mike-

Our office has been working with the Realtors on a proposal to change the requirements regarding how someone with a felony on their record receives a real estate license. Attached is what we've come up with for the moment; there are a couple of things, particularly regarding the pre-application process, we may need to hash out on the phone. Feel free to give me a call tomorrow if you have questions.

Thanks,

Matt

Matt Rossetto  
Office of Representative Dean Knudson  
30<sup>th</sup> Assembly District  
(608) 266-1526



## **Licensing Felons in Wisconsin as Real Estate Brokers and Salespersons**

The WRA is recommending the enactment of legislation to provide the real estate examining board (REEB) with additional guidance as to when a convicted felon should be issued a license to become a Wisconsin real estate broker or salesperson.

### **Background**

Currently, the REEB has broad discretion to determine when an applicant may obtain a real estate license. The only guidelines that exist relate to individuals who are currently licensed that are convicted of crimes. (See e.g., Wis. Admin. Code § REEB 24.17(1), which allows the REEB to determine whether the circumstances of the crime of which the licensee was convicted are "substantially related to the practice of a real estate broker or salesperson.") However, current law does not set forth specific guidelines for the REEB to consider in determining whether to grant a license to an individual with a felony conviction. Accordingly, the intent of this legislation is to provide additional guidance to the REEB to assist them in determining when to grant a license to a convicted felon in order to meet their current statutory responsibility of "safeguard[ing] the interests of the public" (Wis. Stat. § 452.09(1)(e)).

### **Proposed Legislation**

We recommend that proposed criteria for issuing real estate licenses to convicted felons be included in Wis. Stat. Chapter 452, Real Estate Practice, which provides guidance as to the licensure requirements of Wisconsin salespersons, brokers and registered timeshare salespersons. Specifically § 452.09, 452.10 and 452.12 address applications and licensing of salespersons and brokers. Additional statutes and rules relating to applications and licensing affecting real estate licensees are included in Wis. Stat. § 440.01-25, Wis. Admin. Code § REEB 12 and Wis. Admin. Code § SPS 1, 2 and 4.

- (1) An applicant for a real estate license who has been convicted of an offense specified in this subsection in a state or federal court or by military general court-martial shall not be considered for licensure:
  - a. For an offense which is classified as a felony, until the five years has elapsed following completion of any applicable period of confinement, or payment of a fine or fulfillment of any supervision, whichever is the last to occur.
  - b. Once the applicant becomes eligible to apply, the applicant must go before the board to demonstrate that the applicant meets the criteria for licensure. The board, by an affirmative majority vote of the quorum, may grant a license if:
    - i. The applicant has consented to the board conducting a criminal background investigation at the applicant's expense and investigation reveals no further indiscretions. The fee shall be a reasonable and determined by the board.
    - ii. In determining whether a license will be issued, the factors to be considered by the board shall be:

1. Review of any documents relating to the felony and any supplemental information provided by the applicant bearing upon his or her suitability for licensure.
  2. During the review, the board shall consider the following factors or evidence:
    - a. The severity or nature of the felony;
    - b. The period of time that has passed since the felony under review;
    - c. The number or pattern of felonies or other similar incidents;
    - d. The circumstances surrounding the crime that would help determine the risk of repetition;
    - e. The relationship of the crime to the licensed practice of real estate; and
    - f. The applicant's activities since the crime under review, such as employment, education, participation in treatment, payment of restitution or any other factors that may be evidence of current rehabilitation.
  - iii. The applicant shall bear the burden of establishing his or her current suitability for licensure.
- (2) An applicant may appeal an adverse decision by the board within timeframes and process determined by applicable administrative rules or statutes notwithstanding applicable administrative rules or statutes as established by the board.
  - (3) An individual may pre-apply to the board for a predetermination of their ability to receive a real estate license due to their criminal conviction. The board shall consider all factors of this section during its review.
  - (4) This paragraph does not apply with respect to any conviction for which the applicant has received a pardon.

**New subsection of 452.12(5)(d)<sup>1</sup>**

At the time of renewal, each broker and salesperson shall submit a statement affirming that he or she has not been convicted of a crime. A license shall be revoked by the board and the individual shall pay a penalty of no less than \$1,000 for false statements as to this affirmation. This fee shall be paid prior to reissuance or the reinstatement of a license.

**Effective.** This legislation shall apply:

1. To all new license applicants immediately
2. To individuals who have let their license lapse and are reapplying for a reinstatement of their license at the time of application for reinstatement
3. Following the effective date, if a licensee is convicted of a felony and their license is revoked by the board, then the individual must wait the same timeframe as all new applicants before reapplying or seeking reinstatement
4. At the first renewal. (The current real estate biennium ends December 14, 2014.)

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<sup>1</sup> Currently, licensees are required to report any criminal conviction within 48 hours of sentencing as per Wis. Admin. Code § REEB 24.17(1). The intent is to continue this reporting under this proposal and expand the requirement with added penalties for failure to disclose at the time of renewal.

## **Duchek, Michael**

---

**From:** Rossetto, Matt  
**Sent:** Monday, October 14, 2013 2:11 PM  
**To:** Duchek, Michael  
**Subject:** Felon real estate licensees

Hi Mike-

In going back through my email records I'm not 100% sure where we ended things so let me recap where we are at and what we would like to see in a draft:

Regarding your email on 9/25 with questions from the original set of drafting instructions—We have talked with DSPS and are satisfied with how their background check process works. We do NOT need to touch anything related to that in this draft. Your second question involved whether we wanted to cover all felonies in the provision about needing 5 years after completion of sentence to be eligible, instead of just those substantially related to the profession. The answer is yes, we would like to see all felonies covered.

As far as your 3<sup>rd</sup> point, the specific response is in red:

3. The new provision 452.12 (5) (d) appears like it may overlap with the function of current law s. 440.03 (13) (am). It is the intent to take this reporting under 440.03(13)(am) and expand the requirement to the time of renewal with added penalties for failure to disclose.

On the subject of license renewal: Please include language that, at the time of renewal, a licensee acknowledges the board's right to conduct random background checks. (The right exists but this is a reminder to encourage self-reporting)

Finally, the pre-application process. We'd like to see the legislation authorize one, but leave the details of said process up to the Real Estate Examining Board to write into rules. Additionally, please include a provision that would make any determination by the board in this process binding now and in the future (to prevent liability issues as membership of the REEB changes).

Please let me know if you have questions—thanks for your work on this.

Matt

Matt Rossetto  
Office of Representative Dean Knudson  
30<sup>th</sup> Assembly District  
(608) 266-1526

**Duchek, Michael**

---

**From:** Rossetto, Matt  
**Sent:** Wednesday, September 25, 2013 11:53 AM  
**To:** Duchek, Michael  
**Subject:** Re: Drafting instructions RE: real estate licenses for felons

Hi Mike-

I spoke with DSPS this morning and that conversation raised an identical set of questions in my head. I am waiting to hear back from the Realtors so until I do, I think we can hold off on this.

Thanks,

Matt

Sent from my iPhone

On Sep 25, 2013, at 11:48, "Duchek, Michael" <[Michael.Duchek@legis.wisconsin.gov](mailto:Michael.Duchek@legis.wisconsin.gov)> wrote:

Matt,

I will take this one. I do have a few questions, and I can call you after lunchtime. But basically:

1. It appears that DSPS already does checks for arrest and conviction records for real estate board licensees (like other professions). So my question is whether the Board wants to duplicate what DSPS is doing or whether it is doing something different and if so whether we are creating duplicate or overlapping functions. And the same questions regarding the appeal process. Is the idea to create a special appeal process specific to the Real Estate Board?
2. I'm not sure if there are specific crimes envisioned or if *all* felonies cause a bar for 5 years after release from supervision. If it is the latter, then I think we'll especially need to exempt the Board from some provisions in chapter 111 which basically prohibits discrimination on the basis of a felony conviction that doesn't relate to the profession.
3. The new provision 452.12 (5) (d) appears like it may overlap with the function of current law s. 440.03 (13) (am).
4. As you say, I'm not sure about the pre-application process.

Like I said, I can try to call you this afternoon, but wanted to give you a heads up about my preliminary questions. Thanks,

-Mike

---

**From:** Rossetto, Matt  
**Sent:** Tuesday, September 24, 2013 5:05 PM  
**To:** Duchek, Michael  
**Subject:** Drafting instructions RE: real estate licenses for felons

Hi Mike-

Our office has been working with the Realtors on a proposal to change the requirements regarding how someone with a felony on their record receives a real estate license. Attached is what we've come up

with for the moment; there are a couple of things, particularly regarding the pre-application process, we may need to hash out on the phone. Feel free to give me a call tomorrow if you have questions.

Thanks,

Matt

Matt Rossetto  
Office of Representative Dean Knudson  
30<sup>th</sup> Assembly District  
(608) 266-1526

## Duchek, Michael

---

**From:** Rossetto, Matt  
**Sent:** Friday, October 25, 2013 9:09 AM  
**To:** Duchek, Michael  
**Subject:** Re: Real estate draft

Let's stick with the provision already in 452

Sent from my iPhone

On Oct 25, 2013, at 9:05, "Duchek, Michael" <[Michael.Duchek@legis.wisconsin.gov](mailto:Michael.Duchek@legis.wisconsin.gov)> wrote:

OK, how about one more thing. The instructions asked for a penalty of \$1,000 for submitting a false affirmation. Did you mean a criminal penalty (known as a fine) or a civil penalty (known as a forfeiture)?

Note that s. 452.17 (3) already provides that violations of chapter 452 are punishable by a fine of *up to* \$1,000 or imprisoned for not more than 6 months or both, so I could also go with that instead.

---

**From:** Rossetto, Matt  
**Sent:** Thursday, October 24, 2013 3:53 PM  
**To:** Duchek, Michael  
**Subject:** RE: Real estate draft

Hi Mike-

Don't apologize, we need to get this right!

1. That is an accurate statement. The pre-application process will be based on disclosure of the applicant; a background check WILL be conducted if the applicant indicates a felony.
- 2) I would agree with those exceptions. In terms of timing, let's make it permanent.
- 3) This applies to all licensees (by definition of 452) including time share salespersons
- 4) The affirmation should be required for an initial application. This is just for convicted felonies.
- 5) We do not want to require a background check for a renewal, but we do want an acknowledgment that a background check MAY be conducted.
- 6) That is correct
- 7) On application for renewal, the licensee will have to self-declare whether they have been convicted of any felonies. That would jump start the process.

Hopefully this helps—let me know if you have further questions or if I missed something!

Matt

Matt Rossetto  
Office of Representative Dean Knudson  
30<sup>th</sup> Assembly District  
(608) 266-1526

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**From:** Duchek, Michael  
**Sent:** Thursday, October 24, 2013 1:37 PM  
**To:** Rossetto, Matt  
**Subject:** Real estate draft

Matt,

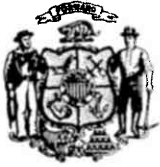
I have been working on the real estate/felony conviction draft, and as I've gotten more into the nitty gritty after reviewing your responses, I just have a few (sorry!) follow up questions to help me finish:

1. Regarding the pre-application process – when someone asks for an answer pre-application process, it sounds like the idea is to allow them to find out if their criminal history is a bar to their licensure without having to go through the full application process and/or pay all the application fees. Let me know if this is not an accurate statement. My question then is - does this pre-application process involve a background check too (as currently conducted by DSPS) or not? In other words, when the board does the pre-approval are they going only off of someone's statements about their criminal history, or will there also be a background check to verify their statements? Where I'm going with this is whether DSPS should conduct a background check when someone requests pre-approval by the REEB and also, if so, if the pre-approval were favorable to the person, whether DSPS would then be conducting *another* background check when the person ultimately applied?
2. It said in the instructions that the pre-application decision should be binding, but I assume it shouldn't be binding in the case of: a) a criminal conviction entered *after* the pre-approval and b) if somehow the person misled the REEB or if the REEB didn't have certain information that would have been very relevant. You may also wish to consider whether it should be binding forever or just for a certain period of time. These are things the REEB could address in rules, but I think that if we're going to say in the statutes that the decision is binding, we should account somehow for potential exceptions.
3. The instructions did not mention time-share salespersons, which receive a certificate of registration instead of a license. Is the intent to apply all of this to them too, or only brokers and other salespersons?
4. Is the affirmation about whether you've been convicted of a felony only necessary for a renewal or should this be required for an initial application too? And should this affirmation be about whether you have been convicted of any crime or just felony? And should a person be required to disclose arrests and charges (which could be pending)?

5. It sounds like DSPS conducts background checks when you initially apply for a license, but I'm not sure they do that for renewals. Do we want to require a background check every time a REEB licensee renews his or her license or is that not necessary?
6. I was a little unclear about the initial applicability, but it sounds like maybe the idea was that if you had a felony conviction that would now bar you from a real estate license, you would be able to keep your license until the next renewal date, but that after that you would/could lose your license. Can you clarify on this point?
7. Also, depending on your answer to #6, will the REEB have to, before 12/14/14, all of a sudden go through and make determinations about current licensees about whether they should be barred from renewing their license due to a felony conviction? If that might be an issue, we could try to address it somehow.

Sorry again for the long list, but hopefully most of these are easy to answer and you can either put your answers in red or feel free to call if that would help.

**Mike Duchek**  
**Legislative Attorney**  
**Wisconsin Legislative Reference Bureau**  
**(608) 266-0130**



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-3247/P1

MED:jlb

Thurs, earlier if possible  
**ASAP TODAY**

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

LPS-  
check  
out to  
reps  
please

note  
subcommittee

pb

4  
1  
2  
3

**AN ACT** relating to: eligibility for a real estate broker or salesperson license  
or a time-share salesperson certificate of registration following a felony  
conviction and granting rule-making authority, and providing a penalty

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

- 4        **SECTION 1.** 440.03 (13) (bm) of the statutes is created to read:
- 5        440.03 (13) (bm) Upon a request by the real estate examining board, the
- 6        department may conduct an investigation to determine whether a person seeking a
- 7        determination by the real estate examining board under the rules promulgated
- 8        under s. 452.07 (2) has an arrest or conviction record. In conducting an investigation
- 9        under this paragraph, the department may require an applicant to provide any
- 10       information that is necessary for the investigation.

\*\*\*\*NOTE: Does this language fit with your intent? I did not specify whether this precludes DSPS from requiring another background check if the person then later applies for a license or certificate, as I figure that whether that is necessary might vary. If you would like to specify something about that, let me know.

1 SECTION 2. 452.01 (4) of the statutes is amended to read:

2 452.01 (4) "Disciplinary proceeding" means a proceeding against one or more  
3 licensees or registrants in which the board may revoke, suspend, or limit a license  
4 or registration, reprimand a licensee or registrant, issue a private letter of warning  
5 to a licensee or registrant, or assess a forfeiture or require education or training  
6 under s. 452.14 (4m) or (4r). ✓

History: 1981 c. 94; 1983 a. 27; 1985 a. 305; 1987 a. 359, 399; 1987 a. 403 s. 256; 1989 a. 341; 1991 a. 221; 1993 a. 127; 1995 a. 27, 400; 1997 a. 263; 2001 a. 102; 2005 a. 87; 2009 a. 2; 2011 a. 32.

7 SECTION 3. 452.01 (4v) of the statutes is created to read:

8 452.01 (4v) "Felony" means a felony under the laws of this state or a crime  
9 committed elsewhere that would be a felony if committed in this state.

\*\*\*\*NOTE: Please review this definition of what constitutes a felony. ✓

10 SECTION 4. 452.025 (1) (b) 3m. of the statutes is created to read: ✓

11 452.025 (1) (b) 3m. A completed copy of the form under s. 452.05 (1) (h). ✓

12 SECTION 5. 452.025 (5) (b) of the statutes is amended to read: ✓

13 452.025 (5) (b) An application to renew a certificate of registration granted  
14 under this section shall, on or before the applicable renewal date specified under s.  
15 440.08 (2) (a), be submitted with the applicable renewal fee determined by the  
16 department under s. 440.03 (9) (a) ~~on or before the applicable renewal date specified~~  
17 under s. 440.08 (2) (a) and a completed copy of the form under s. 452.05 (1) (h). ✓

History: 1987 a. 399; 1989 a. 31; 1991 a. 39; 2007 a. 20; ~~2007 a. 32~~.

18 SECTION 6. 452.05 (1) (h) of the statutes is created to read:

19 452.05 (1) (h) Create a form that allows an applicant for an initial broker or  
20 salesperson license or time-share salesperson certificate of registration, an  
21 applicant applying to renew a license or certificate, or a person applying for a

broker's

salesperson's

salesperson's

(1) determination under the rules promulgated under s. 440.03 (13) (bm), to do all of the  
2 following:

- 3 1. State whether he or she has ever been convicted of a felony. ✓  
4 2. Describe the date of conviction for any felony for which the applicant was  
5 convicted and the nature and circumstances of the felony. ✓  
6 3. Sign his or her name to attest to the accuracy and truthfulness of the  
7 information under subds. 1. and 2. ✓ and to acknowledge the department's authority  
8 to conduct <sup>an</sup> investigation <sup>of</sup> under s. 440.03 (13). ✓

\*\*\*\*NOTE: Please review this provision. I provided that the person must state whether he or she has been convicted of a felony and to describe the <sup>felony</sup>, instead of an affirmation that he or she has not been, because it might be the case that someone who has a felony conviction for which more than 5 years have elapsed since sentence completion might be applying for a determination of whether that felony is a bar to licensure. I also included the acknowledgement about background checks here. Finally, I provided that this form may be used for persons seeking a determination under the pre-application process. Will this work? ✓

9 SECTION 7. 452.07 (2) <sup>✓</sup> of the statutes is created to read:

10 452.07 (2) The board may promulgate rules establishing a procedure that  
11 allows a person who does not possess a <sup>broker's or salesperson's</sup> real estate or salesperson license or a  
12 time-share <sup>salesperson's</sup> certificate of registration to, without submitting a full  
13 application and without paying the fees applicable to applicants, apply to the board  
14 for a determination of whether the person would be disqualified under s. 452.25 (1)  
15 from obtaining a license or certificate. The board shall provide in any rules  
16 promulgated under this subsection, ✓ with respect to felony convictions reviewed by  
17 the board as part of the determination, that the determination is binding upon the  
18 board and the department if the person subsequently applies for a license or  
19 certificate, unless there is information relevant to the determination that was not  
20 available to the board at the time of the determination. ✓

\*\*\*\*NOTE: Please review this provision. You may want to re-word this somewhat. ✓

1           **SECTION 8.** 452.09 (1) (dm) of the statutes is created to read:

2           452.09 (1) (dm) A completed copy of the form under s. 452.05 (1) (h).<sup>✓</sup>

3           **SECTION 9.** 452.12 (5) (d)<sup>✓</sup> of the statutes is created to read:

4           452.12 (5) (d) At the time of renewal, each broker or salesperson shall complete  
5           the form under s. 452.05 (1) (h).<sup>✓</sup>

6           **SECTION 10.** 452.14 (2m)<sup>✓</sup> of the statutes is created to read:

7           452.14 (2m) The board shall conduct disciplinary proceedings in accordance  
8           with the rules adopted under s. 440.03 (1).<sup>✓</sup>

9           **SECTION 11.** 452.14 (3) (intro.) of the statutes is amended to read:

10          452.14 (3) (intro.) ~~Disciplinary proceedings shall be conducted by the board~~  
11          ~~according to rules adopted under s. 440.03 (1).~~<sup>✓</sup> The board may revoke, suspend or  
12          limit any broker's, salesperson's, or time-share salesperson's license or registration,  
13          or reprimand the holder of the license or registration, if it finds that the holder of the  
14          license or registration has:

History: 1981 c. 94, 391; 1983 a. 27 s. 2202 (44); 1983 a. 354; 1985 a. 305; 1987 a. 399; 1989 a. 307, 341, 359; 1991 a. 32, 163; 1993 a. 127; 1995 a. 400;  
2005 a. 87; 2009 a. 95; 2011 a. 32.

15          **SECTION 12.** 452.14 (3m)<sup>✓</sup> of the statutes is created to read:

16          452.14 (3m) Notwithstanding sub. (3),<sup>✓</sup> the board shall revoke a<sup>✓</sup> broker's,  
17          salesperson's, or time-share salesperson's license or registration if it finds that the  
18          holder of the license or registration has done any of the following:

19          (a) Been convicted of a felony that is a bar to licensure or registration under s.  
20          452.25 (1) (a).<sup>✓</sup>

\*\*\*\*NOTE: This *requires* the REEB to revoke a license or registration for a felony conviction, in contrast to sub. (3)<sup>✓</sup>, which allows, but does not require, the REEB to discipline a person under certain circumstances.

21          (b) Violated s. 452.25 (2)<sup>✓</sup> and failed to pay any forfeiture assessed by the board  
(6.) (22) under sub. (4r)<sup>✓</sup> due to that violation.

\*\*\*\*NOTE: This requires the REEB to revoke a license or registration for submitting a false criminal record affirmation and not paying the fee.

History: 1981 c. 94, 391; 1983 a. 27 s. 2202 (44); 1983 a. 354; 1985 a. 305; 1987 a. 399; 1989 a. 307, 341, 359; 1991 a. 32, 163; 1993 a. 127; 1995 a. 400; 2005 a. 87; 2009 a. 95; 2011 a. 32.

1 **SECTION 13.** 452.14 (4r) of the statutes is created to read:

2 452.14 (4r) The board may assess against a person who is licensed or registered  
3 under this chapter a forfeiture of \$1,000 for a violation under s. 452.25 (2).

\*\*\*\*NOTE: I raised some questions with Matt about the provision requested with regards to the assessment of a penalty for a false affirmation. In completing the request, I subsequently noticed that, under s. 452.14 (4m) stats., the REEB already has the authority to assess forfeitures directly. I therefore added language so that the REEB may impose a forfeiture for submitting a false affirmation and that a failure to pay such a forfeiture is grounds for mandatory revocation.

History: 1981 c. 94, 391; 1983 a. 27 s. 2202 (44); 1983 a. 354; 1985 a. 305; 1987 a. 399; 1989 a. 307, 341, 359; 1991 a. 32, 163; 1993 a. 127; 1995 a. 400; 2005 a. 87; 2009 a. 95; 2011 a. 32.

4 **SECTION 14.** 452.15 of the statutes is renumbered 452.15 (1) and amended to  
5 read:

6 452.15 (1) No Except as otherwise provided in sub. (2), no license or certificate  
7 of registration may be issued under this chapter to any person whose license or  
8 certificate under this chapter has been revoked until the expiration of a period  
9 determined in each case by the board or, in the case of revocation under s. 452.17 (4)  
10 (a) 2., a period determined in each case by the board of not less than 5 years from the  
11 date the revocation became finally effective.

History: 1981 c. 94; 1983 a. 354; 1989 a. 341.

12 **SECTION 15.** 452.15 (2) of the statutes is created to read:

13 452.15 (2) Issuance of a license or certificate of registration to a person whose  
14 license or certificate revoked under s. 452.14 (3m) (a) is subject to the provisions in  
15 s. 452.25 (1).

16 **SECTION 16.** 452.25 of the statutes is created to read:

17 **452.25 Felony convictions and disclosures.** (1) **FELONY CONVICTIONS.** (a)

(18) Notwithstanding ss. 111.321, 111.322, and 111.335, no applicant may be issued a

and except as provided in pars. (b) (1)

40

1 broker or salesperson license or a time-share salesperson certificate of registration  
2 if the applicant has been convicted of a felony, except as provided in pars. (b) to (f).  
3

4 (b) If an applicant has been convicted of a felony; the applicant has completed  
5 his or her sentence, including any probation, parole, or extended supervision; and 5  
6 years have elapsed since completing the sentence, the applicant may apply to the  
7 board for a determination as to whether to allow the applicant is suitable to be  
8 granted a license or certificate notwithstanding the prohibition under par. (a).  
9

10 (c) If an applicant applies for a determination under par. (b), the board may  
11 require the applicant to provide any information that is necessary for the  
12 investigation and shall make a determination by doing all of the following:

13 1. Reviewing any information relating to the felony.  
14 2. Reviewing any supplemental information provided by the applicant bearing  
15 upon his or her suitability for licensure as a broker or salesperson.

16 3. Considering all of the following factors:  
17 a. The severity and nature of the felony.  
18 b. The amount of time that has elapsed.  
19 c. The number or pattern of felonies or other similar incidents that gave rise  
20 to the felony conviction.

21 d. The circumstances surrounding the felony bearing on the chance that the  
22 applicant might repeat the behavior that was the subject of the felony.

23 e. The relationship of the felony to real estate practice.

24 f. The applicant's activities since the felony, including employment, education,  
participation in treatment, payment of restitution, and any other factor that may be  
evidence of rehabilitation.

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X  
NEXT  
page

1 (d) With respect to a determination under par. (c),<sup>✓</sup> the applicant, broker,  
2 salesperson, or time-share salesperson bears the burden of demonstrating his or her  
3 suitability for licensure or certification.

4 (e) If the board makes a determination under par. (c) to allow an applicant to  
5 be granted a real estate or salesperson<sup>broker's or salesperson's</sup> license or a time-share salesperson certificate  
6 of registration notwithstanding the prohibition under par. (a), the applicant shall be  
7 granted the license or certificate if the applicant is otherwise eligible.<sup>✓</sup>

8 <sup>NO</sup> (f) This subsection does not apply with respect to a felony for which an applicant  
9 has been pardoned.<sup>✓</sup> <sup>le</sup> The prohibition under this paragraph (end insx)

10 (2) FALSE AFFIRMATIONS.<sup>✓</sup> (a) No person may intentionally submit any false  
11 information<sup>on</sup> in the form created by the board under s. 452.05 (1) (h).<sup>✓</sup>

12 (b) No applicant may be issued a broker or salesperson<sup>broker's or salesperson's</sup> license or a time-share  
13 salesperson<sup>e</sup> certificate of registration if the applicant has violated par. (a) and failed  
14 to pay any forfeiture assessed by the board under s. 452.14 (4r) due to that violation.<sup>✓</sup>

## 15 SECTION 17. Initial applicability.

### 16 (1) FELONY DISQUALIFICATION.<sup>✓</sup>

17 (a) Initial licenses and certificates.<sup>✓</sup> The treatment of section 452.25 (1) of the<sup>of the</sup>  
18 statutes<sup>of the statutes</sup> (with respect to applications for an initial license or registration) first  
19 applies to an initial license or registration under chapter 452 of the statutes that is  
20 issued on the effective date of this subsection.<sup>✓</sup>

21 (b) License and certificate renewals.<sup>✓</sup> Except as provided in paragraph (c), the  
22 treatment of section 452.25 (1) of the statutes<sup>an applicant seeking to renew</sup> (with respect to applications for a  
23 license or certificate renewal) first applies to a license or registration under chapter  
24 452 of the statutes that is renewed on December 15, 2016.<sup>of the statutes</sup>

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previous  
pages

↙ a.s.

\*\*\*\*NOTE: Under subsection (2), currently registered or certified individuals would first have to fill out the felony disclosure form when they renew for the next biennium beginning 12/15/14. I therefore provided here that the felony conviction disqualifier itself would first apply to for the biennium beginning 12/15/16, except that late renewals would be subject to immediate disqualification. Is this consistent with your intent?

1 (c) *Late renewals.* The treatment of section 452.25 (1) of the statutes (with  
 2 respect to applications for a license or registration renewal under section 440.08 (3)  
 3 of the statutes first applies to a license or registration under chapter 452 of the  
 4 statutes that is renewed on the effective date of this subsection.

5 (2) FELONY DISCLOSURE FORM.

6 (a) *Initial licenses and certificates.* The treatment of sections 452.025 (1) (b)  
 7 3m., 452.05 (1) (h) (with respect to applications for an initial license or registration),  
 8 and 452.09 (1) (dm) of the statutes first applies to an initial license or registration under chapter 452  
 9 of the statutes that is issued on the effective date of this subsection.

10 (b) *License and certificate renewals.* Except as provided in paragraph (c), the  
 11 treatment of sections 452.025 (5) (b), 452.05 (1) (h), and 452.12 (5) (d) of the statutes  
 12 first applies (with respect to applications for a license or registration renewal) to a  
 13 license or registration under chapter 452 of the statutes that is renewed on December  
 14 15, 2014. of the statutes first applies

15 (c) *Late renewals.* The treatment of sections 452.025 (5) (b), 452.05 (1) (h), and  
 16 452.12 (5) (d) of the statutes first applies (with respect to applications for a license  
 17 or registration renewal under section 440.08 (3) of the statutes) to a license or  
 18 registration under chapter 452 of the statutes that is renewed on the effective date  
 19 of this subsection.

\*\*\*\*NOTE: These provisions require the felony disclosure form to be filled out for immediately for new applicants and late renewals and, for renewals that are not late, for the next renewal date on 12/15/14. Is this consistent with your intent?

- 1 (3) LICENSE AND CERTIFICATE REVOCATIONS. The treatment of section 452.14 (3m)  
2 (a)✓ of the statutes first applies to a judgment of conviction entered on the effective  
3 date of this subsection.

\*\*\*\*NOTE: With regards to the REEB's authority to revoke licenses due to a felony conviction, I provided that the revocation provision would first apply to felony convictions entered on the bill's effective date. The power to revoke, therefore, would only apply prospectively, and older convictions would be addressed under the provisions pertaining to renewal under subsection (1) (b) and (c).

4 **SECTION 18. Effective date.** a.s. a.s.

- 5 (1) This act takes effect on the first day of the 6th month beginning after  
6 publication.✓

\*\*\*\*NOTE: I included a delayed effective date to give the REEB time to at least create the form under SECTION 6 of the bill. I can modify or eliminate this date as needed.

7

↑  
a.s. (END)

D-note →

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3247/P1dn

MED: A:....

jld

Please review this draft carefully, including the embedded notes. Also, please note the following:

1. Some language was included in the initial instructions about appealing adverse decisions of the board. I was not sure exactly what was being requested here, so I did not include anything with regards to appeals. If something is wanted to address these appeals differently from other determinations, let me know.
2. Should the provisions in the bill apply in the same way to business entities? In drafting this version, I did not make any distinction between business entities and individuals.
3. The instructions referenced licenses that had lapsed. While the REEB had authority regarding reinstatement of inactive licenses, this authority appears to have expired. However, s. 440.08 (3), stats., does provide for late renewal and so I provided that, in the initial applicability provisions, applicants for late renewals are treated like new applicants instead of like other renewals. Let me know if you want to handle this differently. You may also wish to have DSPS review the initial applicability provisions regardless to ensure that they are workable.
4. Please especially review the initial applicability provisions carefully. I also recommend having DSPS review them to ensure they will be interpreted in accordance with your intent.

Michael Duchek  
Legislative Attorney  
Phone: (608) 266-0130  
E-mail: michael.duchek@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3247/P1dn  
MED:jld:jf

November 7, 2013

Please review this draft carefully, including the embedded notes. Also, please note the following:

1. Some language was included in the initial instructions about appealing adverse decisions of the board. I was not sure exactly what was being requested here, so I did not include anything with regards to appeals. If something is wanted to address these appeals differently from other determinations, let me know.
2. Should the provisions in the bill apply in the same way to business entities? In drafting this version, I did not make any distinction between business entities and individuals.
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4. Please especially review the initial applicability provisions carefully. I also recommend having DSPS review them to ensure they will be interpreted in accordance with your intent.

Michael Duchek  
Legislative Attorney  
Phone: (608) 266-0130  
E-mail: michael.duchek@legis.wisconsin.gov

**11/13/2013 Call from Matt in Knutson's office**

For form, want to disclose not just felonies, but all crimes

Form ~~only needed~~ for pre-application process, don't need it for initial applications and renewals as ~~DSPS~~ already does this → update

For renewals, want to make sure it's anyone renewing for the biennium not just not on that date (initial app)

Expungement – want to make sure expunged crimes are not included. Talk to Cathlene

Revise page 7, line 10 to make it clear that they still have to take exam, etc.

Go into effect of the new statute about the crimes

→ See follow up email for more → they want an affirmation at renewal as well

## Duchek, Michael

---

**From:** Rossetto, Matt  
**Sent:** Monday, November 18, 2013 1:41 PM  
**To:** Duchek, Michael  
**Subject:** RE: Questions

My understanding is that the intent was not to address businesses—only individual license holders.

---

**From:** Duchek, Michael  
**Sent:** Monday, November 18, 2013 1:38 PM  
**To:** Rossetto, Matt  
**Subject:** RE: Questions

Matt,

One other question – the provisions in the draft more or less are written assuming that we are talking about licensees that are individuals (i.e., licensees that are human beings). However, the REEB *also* issues licenses to business entities themselves. Should the bill address licensure of business entities somehow or is the intent only to address licensees that are not business entities?

Note that under current law, s. 452.12 (2) (a), a license may be issued to a business entity if the business entity has at least one business representative (see definition under s. 452.01 (3k)) licensed as a broker. The license issued to the business entity entitles each business representative of the business entity who is a licensed broker to act as a broker on behalf of the business entity.

So if you wanted we could, for example, require each business representative to sign the forms and make the felony disqualifier apply if any business representative has been convicted of a felony. Or not. But I was thinking the draft could be clearer either way as to whether it applies only to individual license holders.

Thanks,

-Mike

---

**From:** Rossetto, Matt  
**Sent:** Thursday, November 14, 2013 12:37 PM  
**To:** Duchek, Michael  
**Subject:** FW: Questions

Responses below

---

**From:** Cori M. Lamont [<mailto:CoriL@wra.org>]  
**Sent:** Thursday, November 14, 2013 12:31 PM  
**To:** Rossetto, Matt  
**Subject:** RE: Questions

Hi Matt,

Please see below.

As a side note, we would to make one more change. We would like to provide the board with the flexibility to determine whether a license should be revoked if the individual lies at the time of renewal. They should be fined of course.

However, we argue there is a distinction to be made between a new applicant that is not established in the business compared to someone that has made real estate a career. This is reflected in my comments below as well.

Cori  
Cori M. Lamont  
Director of Regulatory Affairs  
**Wisconsin REALTORS® Association**  
4801 Forest Run Road  
Madison, WI 53704  
tel: 608-241-2047 | fax: 608-241-5168 | [www.wra.org](http://www.wra.org)  
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=====  
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**From:** Rossetto, Matt [<mailto:Matt.Rossetto@legis.wisconsin.gov>]  
**Sent:** Thursday, November 14, 2013 11:17 AM  
**To:** Cori M. Lamont  
**Subject:** FW: Questions

Hi Cori-

Drafter just sent this. Mind taking a look?

---

**From:** Duchek, Michael  
**Sent:** Thursday, November 14, 2013 11:15 AM  
**To:** Rossetto, Matt  
**Subject:** Questions

Matt, two questions:

1. So the criminal record disclosure form in the bill will only be used for the pre-application process. Is it still the case that the felony disqualifier would only apply to renewals for the biennium beginning Dec. 15, 2016? Or would you want that to be for the biennium beginning on Dec. 15, 2014 (which would mean felons would lose their license at the next renewal)? Assuming no one has renewed by the time the bill is enacted, I would think moving it up would be fine though there might be other considerations that weigh in favor of waiting until the 12/15/16 renewal. **We wanted to keep the licensing process as it currently exists but wanted to clarify when an applicant would not qualify for licensure. The pre-determination process needs to be broadened to include felonies and misdemeanors. Currently under the application process the applicants has to disclose all criminal convictions not just felonies.**
- 2.
3. As to the renewal affirmation, it should do a few things:
4. 1) affirm that they have not been convicted of any crime (felony and misdemeanors) during the last two years
5. 2) acknowledge that the state may revoke their license if they lie (the board should have to look at this with the same requirements as a person who finally qualifies as new applicant with a felony)
6. 3) acknowledge that the state will fine if they lie
7. 4) acknowledge that the state has the authority to conduct random background checks to confirm this information

**We want the renewal affirmation applicable in December 2014.**

**If a current licensee tells the truth at the time of renewal, then the board should have the ability to review the information. It is possible that the board knows about the felony and the renewal information is just confirming what the board already knew.**

**The authority granted to the REEB under current law and the draft to directly assess forfeitures only extends to persons who are licensed by or registered with the REEB. Was it the intent that the REEB should also be able to assess a forfeiture against someone who lies in the form for the preapplication process but never receives a license? No.**

Thanks,

**Mike Duchek  
Legislative Attorney  
Wisconsin Legislative Reference Bureau  
(608) 266-0130**